

N.D.A.G. Letter to Bopp (Aug. 1, 1985)

August 1, 1985

Mr. Lyle R. Bopp
Sargent County State's Attorney
Box 3 Main Street
Forman, ND 58032

RE: Request for an Attorney General's Opinion concerning N.D.C.C. § 57-02-08-(15)

Dear Mr. Bopp:

Thank you for your letter of June 10, 1985. Wherein, you asked:

1. Whether a seed plant owned by a farmer that obtains grain from commercial sources and other farmers is exempt from local property taxes pursuant to N.D.C.C. § 57-02-08(15).
2. If the property is taxable, whether the property should be taxed pro rata based upon the source of the grain.

I am responding with a letter rather than a formal Attorney General's opinion because I believe that a 1980 Attorney General's opinion is controlling. That opinion states as follows:

[w]hen grain is purchased by a person who did not grow it but who resells it either at retail or at wholesale, that person by so handling that grain is conducting a retail or wholesale business other than farming. . . . It therefore follows that a building or structure that is 'used in connection with a retail or wholesale business other than farming' but is also used in connection with farming is not exempt even though it is used mainly, or primarily or pre-dominately, in connection with farming.

1980 N.D. Op. Att'y Gen. 136, 140.

The Attorney General concluded that

no part of the value of any structure . . . would be exempt if the structure is used partly or totally by the farmer for storing or for cleaning or treating grain that he purchased from other producers in its original condition and which he then sold after storing, cleaning or treating it.

Id. at 139.

The local property tax assessor is best able to determine whether or not the property is taxable pursuant to N.D.C.C. § 57-02-08(15) and the 1980 Attorney General's opinion. If the assessor determines that the property is used, however little, to sell grain that the plant owner acquired from commercial sources or other farmers, then the 1980 Attorney General's opinion permits taxation of the entire plant.

I have enclosed a copy of the 1980 Attorney General's opinion. I trust that it answers your questions. If you have further questions, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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Enclosure